Patent Application No. 10/043,714
Amdt. Dated May 23, 2007
Reply to Final Office Action of January 26, 2007

Docket No. MET2.PAU.25

REMARKS

In response to the final Office Action of January 26, 2007, please reconsider the present application in view of the following remarks. Applicant wishes to thank the Examiner for carefully considering the application.

Disposition of Claims

Claims 1-21 are currently pending. Claims 1, 8, and 12 are independent. The remaining claims depend, directly or indirectly, from claims 1, 8, and 12.

Improper Finality of the Office Action

As an initial matter, Applicant respectfully submits that the finality of the instant Office Action is improper and should be withdrawn. The instant Office Action includes only responses to Applicant's arguments filed October 4, 2006, without expressly setting forth new grounds of rejections or maintaining previous rejections. Further, the instant Office Action has failed to read in or consider Applicant's claim amendments filed October 4, 2006. The instant Office Action only provides a simple disclaimer that "per Applicant's request, claims 1-21 have been amended" without substantively addressing the amendments in rejecting the claims. The Office Action does not meet the burden of proof in showing that all of the limitations in the claims are disclosed by the cited references.

Applicant hereby requests a non-final, supplemental Office Action be provided including Examiner's consideration of all claim limitations in their amended form. However, if the Examiner finds Applicant's following arguments convincing and allows the claims, then the supplemental Office Action is not necessary.

Rejection under 35 U.S.C. 103(a)

As discussed above, Applicant can only assume that all the rejections set forth in the Office Action dated July 6, 2006 are maintained. Accordingly, the following arguments are organized in response to such rejections.

Claims 1-3 and 5-7

Claims 1-3 and 5-7 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,738,978 ("Hendricks") in view of U.S. Patent No. 6,088,722 ("Herz"). The rejection is respectfully traversed because for at least the following reasons, Hendricks and Herz, alone or combined, fail to show or suggest the claimed limitations.

The claimed invention is directed to a television rating system for targeted program delivery. Independent claim 1 requires, in part, "a contextual *behavioral profiling* system *included in the client-side* system" for "*deriving profiling information* related to a television user's viewing behavior with content and usage-related preferences." This provides an intelligent and flexible method for targeted program

delivery. By contrast, Hendricks and Herz, alone or in combination, fail to show or

suggest at least the above-mentioned limitations.

Further, in the instant Office Action, the Examiner fails to read in all of the

above-mentioned limitations. In the Office Action dated July 6, 2006 (page 4, lines 4-7),

the Examiner has equated the controller 214 of Hendricks to the contextual behavioral

profiling system of the claimed invention. It is respectfully submitted that the

Examiner's assertion is incorrect. Referring to, *e.g.*, Fig. 1 and the associated text of

Hendricks, the network controller 214 is *clearly in the server side*, and *not* in the client

side. As shown, the controller 214 is included in the cable headend 208. The instant

Office Action (page 2, lines 19-20) further admits that the cable headend 208 of

Hendricks is a server-side system. Furthermore, Hendricks is completely silent with

respect to "a contextual *behavioral profiling* system *included in the client-side* system"

for "*deriving profiling information* related to a television user's viewing behavior with

content and usage-related preferences" as claimed.

Herz, as in Hendricks, fails to show or suggest at least the above-mentioned

limitations, and fails to supply that which Hendricks lacks. This is also evidenced by the

fact that Herz was relied upon by the Examiner merely to supply a clustering engine.

For at least these reasons, Hendricks and Herz, whether considered separately or

in combination, fail to show or suggest all of the limitations in independent claim 1 of the

present application. Thus, independent claim 1 of the present application is patentable

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over Hendricks and Herz. Dependent claims 2, 3 and 5-7 are allowable for at least the

same reasons. Accordingly, withdrawal of the rejection of claims 1-3 and 5-7 is

respectfully requested.

Claim 4

Claim 4 stands rejected under 35 U.S.C. 103(a) as being unpatentable over

Hendricks in view of Herz, and further in view of U.S. Patent Application Pub. No.

2005/0193410 ("Eldering"). The rejection is respectfully traversed because for at least

the following reasons, Hendricks, Herz and Eldering, alone or combined, fail to show or

suggest the claimed limitations.

Claim 4 depends from claim 1 and includes all the limitations of claim 1. More

specifically, claim 4 also has the limitation of "behavioral profiling." As discussed

above, Hendricks and Herz do not disclose such limitations. Eldering, like Hendricks and

Herz discussed above, also fails to show or suggest at least the above-mentioned claimed

limitations, and fails to supply what is missing in Hendricks and Herz. Eldering is, in

fact, completely silent with respect to "behavioral profiling" as required by claim 4. This

is also evidenced by the fact that Eldering was relied upon by the Examiner merely to

supply a specific clustering engine.

In view of the above, Hendricks, Herz, and Eldering, whether considered

separately or in any combination, fail to show or suggest all of the limitations of claim 4.

Thus, claim 4 of the present application is patentable over Hendricks, Herz, and Eldering

for at least the reasons set forth above. Accordingly, withdrawal of the rejection of claim

4 is respectfully requested.

Claims 8-10

Claims 8-10 stand rejected under 35 U.S.C. 103(a) as being unpatentable over

U.S. Patent No. 5,798,785 ("Hendricks (785)") in view of U.S. Patent No. 6,177,931

("Alexander"). The rejection is respectfully traversed because for at least the following

reasons, Hendricks (785) and Alexander, alone or combined, fail to show or suggest the

claimed limitations.

Independent claim 8 of the present application requires, in part, a client-side

device for recording "contextual *transition behaviors* profiling" the user to continually

build a user profile of preferences and contextual transition behaviors associated with the

user. In the Office Action dated July 6, 2006 (page 9, lines 9-14), the Examiner asserts

that the microprocessor 602 of Hendricks (785) records "contextual transition behaviors."

Applicant respectfully disagrees. Hendricks (785), in col. 29, lines 26-43, discloses

recording "clues" such as "programs watched and time periods of television viewing."

However, such clues are not equivalent to the "contextual *transition* behaviors" of

the claimed invention. The concept of "transition," as clearly defined in the specification

of the present application, is completely different from the static recording of "programs

watched and time periods of television viewing." Rather, referring to, *e.g.*, paragraphs

[0036], [0037], [0063], [0064] and [0069] of the publication (Pub. No. 2003/0101451) of

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the current application No. 10/043,714, "transition" is a dynamic concept including, for example, transition *events* and *state* transitions. More specific examples of the "transition" include regular program and Ad *transitions*. Advantageously, the claimed invention can use program arrival and departure *frequency* and *click timing* as preference indicators (*see, e.g.,* paragraph [0007] of the published application), which is an intelligent process as compared to rudimentary systems where only "programs watched and time periods of television viewing" are recorded.

For example, two television users A and B both watch CNN for one hour a day, and both watch ABC for two hours a day. In the system of Hendricks (785), users A and B would have exactly the same profile because each of them watches CNN and ABC ("programs watched") for one hour and two hours ("time periods of television viewing"), respectively. However, user B may be switching back and forth many times between CNN and ABC during the same 3 hours. Such a behavior is obviously different from that of user A, but cannot be discerned by the system of Hendricks (785). Thus, contrary to the Examiner's assertions, Hendricks (785) fails to show or suggest the claimed invention as recited in independent claim 8, particularly the "contextual *transition behaviors* profiling" limitation of the present application.

Alexander, like Hendricks (785) discussed above, also fails to show or suggest the above-mentioned limitations, or to supply what is missing from Hendricks. This is also evidenced by the fact that Alexander was relied upon by the Examiner merely to supply a

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device for providing to the one or more users the program content in accordance with the

user's demographic information.

In view of the above, Hendricks (785) and Alexander, whether considered

separately or in combination, fail to show or suggest the claimed invention as recited in

independent claim 8 of the present application. Thus, independent claim 8 of the present

application is patentable over Hendricks (785) and Alexander for at least the reasons set

forth above. Dependent claims 9 and 10 are allowable for at least the same reasons.

Accordingly, withdrawal of the rejection of claims 8-10 is respectfully requested.

Claim 11

Claim 11 stands rejected under 35 U.S.C. 103(a) as being unpatentable over

Hendricks (785) in view of Alexander further in view of U.S. Patent No. 5,801,747

("Bedard"). The rejection is respectfully traversed because for at least the following

reasons, Hendricks (785), Alexander, and "Bedard," whether considered separately or in

any combination, fail to show or suggest all the claimed limitations.

Claim 11 depends from claim 8 and includes all the limitations of claim 8. As

discussed above, Hendricks (785) and Alexander fail to show or suggest all the

limitations, particularly the claimed "contextual transition behavioral profiling." Bedard,

like Hendricks (785) and Alexander discussed above, also fails to show or suggest all the

limitations of claim 11, or to supply what is missing in Hendricks (785) and Alexander.

Bedard is, in fact, completely silent with respect to the claimed "contextual transition

behavioral profiling." This is further evidenced by the fact that Bedard was relied upon

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by the Examiner merely to supply a preference engine. Thus, claim 11 of the present

application is patentable over Hendricks (785), Alexander, and Bedard for at least the

reasons set forth above. Accordingly, withdrawal of the rejection of claim 11 is

respectfully requested.

Claims 12, 13, 15-18 and 21

Claims 12, 13, 15-18 and 21 stand rejected under 35 U.S.C. 103(a) as being

unpatentable over Hendricks in view of Alexander further in view of Hendricks (785).

The rejection is respectfully traversed because for at least the following reasons,

Hendricks, Alexander, and Hendricks (785), alone or combined, fail to show or suggest

the claimed limitations.

Independent claim 12 of the present application requires, in part, a knowledge

base acquirer outputting a knowledge base in the form of a *"transition* matrix."

Hendricks, Alexander, and Hendricks (785), alone or in combination, fail to show or

suggest at least such limitations.

In the Office Action dated July 6, 2006 (page 14, lines 6-7) the Examiner asserts

that Hendricks teaches in col. 78 and col. 71 a matrix with weight sets. It is respectfully

submitted that such an assertion is incorrect. Hendricks does not have a col. 78 or col.

71. In addition, the Examiner appears to admit that Hendricks does not teach the

"transition" matrix as the Examiner has not read in the limitation "transition."

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However, the Examiner further asserts that Hendricks teaches, in col. 37, lines 1-5 "the transition matrix predicting..." This is also incorrect. The part of Hendricks relied upon by the Examiner merely reads:

> Referring back to FIG. 17, the fourth subroutine, as represented at function block 428, uses the final matrix developed by the correlation and weighing algorithm described above, to select a grouping (or selective filter) for each set top terminal 220.

Contrary to the Examiner's assertions, Hendricks is completely silent with respect to "transition" as claimed, discussed earlier. The matrix of Hendricks is merely a "programs watched matrix," which is completely different from a "transition matrix."

Like Hendricks discussed above, Alexander and Hendricks (785) are also completely silent with respect to the claimed "transition matrix." Thus, Hendricks, Alexander, and Hendricks (785), whether considered separately or in any combination, fail to show or suggest the claimed invention as recited in independent claim 12 of the present application. Thus, independent claim 12 of the present application is patentable over Hendricks, Alexander, and Hendricks (785). Dependent claims 13, 15-18, and 21 are allowable for at least the same reasons. Accordingly, withdrawal of the rejection of claims 12, 13, 15-18, and 21 is respectfully requested.

Claims 14 and 19

Claims 14 and 19 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks in view of Alexander further in view of Hendricks (785) further in view

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of Herz. The rejection is respectfully traversed because for at least the following reasons, the cited references, alone or combined, do not show or suggest all of the claimed limitations.

Claims 14 and 19 depend from independent claim 12 and include all the limitations of claim 12. As discussed above with respect to claim 12, Hendricks, Alexander, and Hendricks (785) fail to show or suggest all the limitations of claims 14 and 19. Herz, like Hendricks, Alexander, and Hendricks (785) discussed above, also fails to show or suggest all of the limitations of claim 12 more particularly the *"transition matrix"* as claimed, or to supply that which Hendricks, Alexander, and Hendricks (785) lack. Thus, Hendricks, Alexander, Hendricks (785), and Herz, whether considered separately or in any combination, fail to show or suggest all the limitations of claims 14 and 19. Thus, claims 14 and 19 are patentable over Hendricks, Alexander, and Hendricks (785) for at least the reasons set forth above. Accordingly, withdrawal of the rejection of claims 14 and 19 is respectfully requested.

Claim 20

Claim 20 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks in view of Alexander further in view of Hendricks (785) further in view of Herz further in view of a tutorial on hidden Markov models and selected applications in *speech recognition* by Rabiner et al. ("Rabiner"). The rejection is respectfully traversed because for at least the following reasons, the cited references, alone or combined, do not show or suggest all of the claimed limitations.

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Claim 20 depends from claims 14 and 12, and includes all the limitations of claim 12. Rabiner fails to supply that which Hendricks, Alexander, Hendricks (785), and Herz lack with respect to all the limitations of claim 12, particularly the claimed "transition matrix." This is further evidenced by the fact that Rabiner was relied upon by the Examiner merely to supply random processing. Thus, the cited references cannot possibly show or suggest all the limitations of claim 20.

It is further respectfully submitted that, in order to properly combine the cited references, there must be some motivation or suggestion. The Examiner, on the other hand, has relied heavily on his personal knowledge to supply a motivation to combine. Applicant hereby respectfully requests that the Examiner provides an affidavit under 37 CFR 1.104(d)(2).
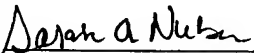
Furthermore, the fact that the Examiner has used five (5) references to arrive at the claimed invention without properly supplying a motivation to combine the references, and the fact that the references are combined despite that Rabiner is directed to applications in speech recognition and has nothing to do with television programming, are strong indications that the Examiner, aided with the present application as a road map, has used impermissible hindsight reconstruction to pick and choose among isolated disclosures in the prior art. Such a practice is improper.

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In view of the above, Hendricks, Alexander, Hendricks (785), Herz, and Rabiner, whether considered separately or in any combination, fail to show or suggest all the limitations of claim 20 of the present application. In addition, there is no motivation to combine the cited references. Thus, claim 20 is patentable over Hendricks, Alexander, Hendricks (785), Herz, and Rabiner for at least the reasons set forth above. Accordingly, withdrawal of the rejection of claim 20 is respectfully requested.

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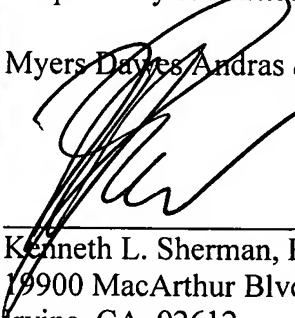
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CONCLUSION

For these and other reasons, Applicants believe that the rejected claims are in condition for allowance. Reconsideration, re-examination, and allowance of the rejected claims are respectfully requested.

Please direct all correspondence to **Myers, Dawes Andras & Sherman, LLP,** 19900 MacArthur Blvd., 11th Floor, Irvine, California 92612.

Certificate of Mailing	Respectfully submitted,
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: MS AF Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on: May **23**, 2007. By: Sarah A. Nielsen _Sarah a Nielsen_ Signature	Myers Dawes Andras & Sherman, LLP 5/23/7 _____ Kenneth L. Sherman, Reg. No. 33,783 19900 MacArthur Blvd., 11th Floor Irvine, CA 92612 Tel: (949) 223-9600 Fax: (949) 223-9610 USPTO Customer No.: 23386

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